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In re Application of GOODMAN	:	
U.S. Application No.: 10/509,968	:	
PCT Application No.: PCT/US03/09695	:	
Int. Filing Date: 28 March 2003	:	DECISION
Priority Date Claimed: 01 April 2002	:	
Attorney Docket No.: (none)	:	
For: AN ARTICLE OF CLOTHING WITH A	:	
NOVEL ATTACHMENT MEANS	:	

This is in response to applicant's correspondence filed 02 September 2005, which is being treated as petitions under 37 CFR 1.183 and 37 CFR 1.137(b).

BACKGROUND

On 28 March 2003, applicant filed international application PCT/US03/09695, which claimed priority of an earlier United States application filed 01 April 2002. The thirty-month period for paying the basic national fee in the United States expired on 01 October 2004.

On 01 October 2004, applicant filed national stage papers in the United States Designated/Elected Office (DO/EO/US). The submission was accompanied by, *inter alia*, a credit card payment form which authorized the Office to charge \$365.00 for the basic national fee required by 35 U.S.C. 371(c)(1).

International application PCT/US03/09695 became abandoned as to the United States for failure to timely pay the full basic national fee.

On 02 September 2005, applicant filed the present petitions under 37 CFR 1.183 and 37 CFR 1.137(b).

DISCUSSION

I. Petition under 37 CFR 1.183

The petition seeks a waiver of the \$750.00 petition fee for revival of the present application under 37 CFR 1.137(b). Effective 22 November 2004, a petition under 37 CFR 1.183 must be accompanied by the requisite \$400.00 petition fee. See *Federal Register*, Vol. 169, No. 182, pp. 56536-56537 (21 September 2004). A review of the application reveals that the petition fee has not been submitted.

In addition, the following observations are made. Pursuant to PCT Article 39, 35 U.S.C. 371(c), and 37 CFR 1.495(b), the full basic national fee is due 30 months from applicant's earliest priority date. In the present case, the basic national fee was due on 01 October 2004. Effective 01 October 2004, the basic national fee for the present application was \$375.00. See 37 CFR 1.492(a)(1). Since applicant's credit card authorization was limited to \$365.00, the basic national fee submission was deficient by \$10.00, and the application therefore became abandoned. Pursuant to 37 CFR 1.23(b), the Office will not accept a general authorization to charge fees to a credit card, and thus the Office was not permitted to charge the extra \$10.00 to applicant's credit card.

The petition further states that applicant relied upon the incorrect advice of the PCT Help Desk to his detriment. Applicant is advised that pursuant to 37 CFR 1.2, no attention is paid to any alleged oral promise, stipulation, or understanding made during conversations with Office personnel. The Office regrets any misleading information that may have been spoken to applicant. It is noted that the 01 October 2004 basic national fee revisions were correctly published in the *Federal Register* (Vol. 69, No. 166, p. 52606, 27 August 2004) and the *Official Gazette* (31 August 2004). As set forth in MPEP 1893.01(c), "Because the national stage fees are subject to change, applicants and examiners should always consult the *Official Gazette* for the current fee listing." Applicant's failure to provide the proper basic national fee, when such fee was on public record, is not deemed an extraordinary situation which would require suspension of the rules.

II. Petition under 37 CFR 1.137(b)

Under 37 CFR 1.137(b), a petition requesting that an application be revived on the grounds of unintentional abandonment must be accompanied by: (1) the required reply unless previously filed, (2) the petition fee as set forth in 37 CFR 1.17(m), (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition was unintentional, and (4) a terminal disclaimer if the application was filed before 08 June 1995.

With regard to item (1) above, effective 01 February 2005 and retroactive to 08 December 2004, the basic national fee for a small entity was \$150.00, the search fee under 37 CFR 1.492(b)(2) was \$200.00, and the examination fee under 37 CFR 1.492(c)(1) was \$50.00. See *Federal Register* (Vol. 70, No. 20, p. 5053-5055, 01 February 2005). Because applicant had

submitted fees in excess of \$150.00 by 08 December 2004, the required reply for the purposes of the petition under 37 CFR 1.137(b) has been submitted.

With regard to item (2) above, although the petition states that two of Form PTO-2038 are included with the petition, such forms do not appear in the application file. If applicant has a return postcard receipt which lists the credit card payment forms in its itemized contents, applicant should submit a copy of both the return postcard receipt and the credit card payment forms. If applicant does not have a return postcard receipt, then payment for the petition fee in a form described in 37 CFR 1.23 must be submitted.¹

With regard to item (3) above, the requisite statement has not been provided. Applicant is strongly encouraged to use Form PTO/SB/64pct which can be downloaded from the USPTO web site at the following address: <http://www.uspto.gov/web/forms/sb64pct.pdf>.

With regard to item (4) above, because the application was filed after 08 June 1995, a terminal disclaimer is not required.

CONCLUSION

For the reasons set forth in §I above, the petition under 37 CFR 1.183 is DISMISSED without prejudice.

For the reasons set forth in §II above, the petition under 37 CFR 1.137(b) is DISMISSED without prejudice.

If reconsideration on the merits of the petitions is desired, a proper response must be filed within TWO (2) MONTHS from the mail date of this decision. If applicant chooses not to request reconsideration regarding the petition under 37 CFR 1.183, the \$400.00 petition fee need not be submitted.

Please direct further correspondence with respect to this matter to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



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¹ To summarize, total fees in the amount of \$1,150.00 (i.e. \$150.00 for the basic national fee, \$200.00 for the search fee, \$50.00 for the examination fee, and \$750.00 for the 37 CFR 1.137(b) petition fee) were due. Applicant has previously submitted \$365.00 in fees. Therefore, a total of \$785.00 is outstanding.